## APPENDIX I

SUPREME COURT OF PENNSYLVANIA
MIDDLE DISTRICT
HARRISBURG

April 29, 1959

Christian V. Graf, Esquire
11 North Front Street
Harrisburg, Penna.

Dear Mr. Graf:

JONES MOTOR CO., INC.

v.

PENNA. PUBLIC UTILITY COMMISSION

No. 123-A Miscellaneous Docket

Please be advised that the Court has entered the following order on petition for allocatur at No. 53 March Term, 1959:

"Per Curiam 4/27/59 Petition denied."

Very truly yours,

CHARLES H. McKIBBEN
*Prothonotary*

By /s/ MIRIAM A. GREENAWALT
*Deputy Prothonotary*

c. c.

William J. Wilcox, Esq., 624 Commonwealth Bldg., Allentown, Pa.

Thomas M. Kerrigan, Esq., 127 North Office Bldg., Harrisburg, Pa.

Paul F. Barnes, Esq., 811 Lewis Tower Bldg., Philadelphia 2, Pa.

## APPENDIX II

IN THE SUPERIOR COURT OF PENNSYLVANIA

No. 53 March Term, 1959

JONES MOTOR COMPANY, INC., *Appellant*,

v.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

**Appeal From the Order of the Pennsylvania Public Utility Commission at Complaint Docket No. 16813**

**Opinion by Hirt, J.**

Filed: March 18, 1959

On August 5, 1957 Pennsylvania Public Utility Commission, of its own motion, filed a complaint against Jones Motor Company, Inc., charging it with violation of Art. II, § 202(b) and (c) of the Public Utility Law of May 28, 1937, P.L. 1053, as amended, 66 P S § 1122. The basis of the complaint was the transportation of commodities by motor truck as a common carrier between points in Pennsylvania without certification by the Commission. Highway Express Lines, Inc., and Modern Transfer Company, Inc., holders of certificates of public convenience issued to them by the Commission, were granted leave to intervene in the proceeding on their allegation that they were adversely affected by the unauthorized carrier activity of the respondent in Pennsylvania.

The complaint specifically charged 22 violations which included: eleven shipments originating in Philadelphia for delivery in Allentown, Bethlehem, Easton and Catasauqua, Pennsylvania; for shipments originating in Easton destined for Philadelphia and Hatboro, Pennsylvania; three shipments originating in Bethlehem for Philadelphia; one shipment originating in Oaks for Bethlehem; one shipment originating in Emmaus for Philadelphia; one ship-

ment originating in Catasauqua for Philadelphia; and one shipment originating in Chester for Bethlehem. That these shipments had been made, was admitted by the respondent; in justification however it asserted certificates of public convenience and necessity issued by the Interstate Commerce Commission, specifically set forth in its answer to the complaint.

The respondent, Jones Motor Company, Inc., holds a number of certificates issued by Pennsylvania Public Utility Commission authorizing it to transport property as a Class A common carrier between points within this State. But the extent of the common carrier rights is restricted for the most part to local transportation. They are enumerated in a finding of the Commission thus: " . . . it is authorized to transport property as a Class A carrier between Allentown and Easton and intermediate points via Bethlehem, Butztown and Dryland; and it holds rights as a Class A carrier between Bethlehem, Allentown and Stroudsburg and intermediate points over specified routes; between Borough of Bally, Berks County and Philadelphia and intermediate points, including Spring City, Trappe, King of Prussia, and Bridgeport; between Philadelphia and Reading; and between Reading and Bally."

Jones Motor Company, Inc., under Interstate Commerce Commission certificate MC 4963 had authority to transport commodities "From Philadelphia over U.S. Highway 1 to New York and return over the same route." Under the same certificate ancillary carrier service by this respondent was authorized: "to and from off route points . . . in that part of New Jersey within 35 miles of Princeton, New Jersey . . ." Both Trenton and Clinton, N. J. are within 35 miles of Princeton.

Prior to August 18, 1952 Clinton Motor Express had interstate commerce rights, as a common carrier over U.S. Highway Route 22 between Allentown, Pennsylvania,

via Clinton, to Elizabeth, New Jersey. On the above date Jones Motor Company, Inc., with the consent of the Interstate Commerce Commission, acquired by purchase all of the operating rights of Clinton Motor Express. After the sale was consummated, the Jones company, by I.C.C. certificate numbered MC 4963 Sub 7, was authorized to operate as a common carrier "Between Allentown, Pa., and Elizabeth, N. J. . . . over U.S. Highway 22 to junction New Jersey Highway 28" and thence to Elizabeth "and return over the same route". Under this certificate service was also authorized "to and from all intermediate points and off-route points . . . in Pennsylvania within 25 miles of Allentown".

The operation with which we are concerned in the shipments described in the complaint, consists in a combination of authorized service from Philadelphia under certificate MC 4963 to Clinton, N. J. joined by a "tacking" process upon that authorized by I.C.C. certificate MC 4963 Sub 7 which included service on U.S. Route 22 between Clinton and points within 25 miles from Allentown. Respondent admittedly in 1953 began the transportation of general commodities between the two areas of Philadelphia and Allentown under the above two I.C.C. certificates and has continued that service without authority from our Public Utility Commission. It is not without significance that the Jones company in 1950 had filed an application with our Public Utility Commission in an effort to consolidate its distinct and unconnected "northern" and "southern" class A. routes in Pennsylvania, above referred to, for which it held Pennsylvania P.U.C. certificates of public convenience. The order of the Commission granted on the application allowed an extension of routes from Allentown to Pottstown, a distance of 13 miles which in effect, by connecting the two certified local areas, gave respondent intrastate common carrier rights between the Philadelphia area and Allentown and to Stroudsburg on the north. On appeal to this court, however by a number of carriers which had

protested the application before the Commission, we reversed the order on the ground that inadequacy of existing service and the need for the additional service as proposed had not been proven. Modern Tr, Co. et al. v. Pa. P.U.C., 179 Pa. Superior Ct. 46 (1955), 115 A. 2d 887. An allocatur to the Pennsylvania Supreme Court was refused. Thus it not only appears that respondent does not have intrastate rights for transportation between the Philadelphia and Allentown areas but it is established with finality that it is not entitled to certification to that end.

Jurisdiction over interstate transportation by motor vehicles was conferred on the Interstate Commerce Commission by the Federal Motor Carrier Act of August 9, 1935, as amended, 49 U.S.C.A. § 301 et seq., which however in § 302(b) provides: "Nothing in this chapter shall be construed to affect the powers of taxation of the several States or to authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof." Thus the Congress has asserted a hands-off policy by expressly recognizing the power of each State to regulate commerce within its borders. Eicholz v. Public Service Commission, 306 U.S. 268, 59 S. Ct. 532 was a case in which the Commission had revoked Eicholz' carrier permit on a finding that he had unlawfully engaged in intrastate commerce under the pretense of transacting interstate business. On appeal the District Court from the evidence found that the carriage of property from Missouri into Kansas and thence back into Missouri for delivery there was not "the normal, regular, or usual route for shipping merchandise between the two cities in Missouri: and the court accordingly refused to issue a permanent injunction restraining the State Commission from prosecuting actions against Eicholz for using State Highways in the transporting of property for hire in interstate commerce. On appeal, the Supreme Court of the United States in affirming the

order said: "We may assume that Congress could regulate interstate transportation of the sort here in question, whatever the motive of those engaging in it. But in the absence of the exercise of federal authority, and in the light of local exigencies, the State is free to act in order to protect its legitimate interests even though interstate commerce is directly affected." Cf. Nevin B. Lines, Inc. et al. v. Public Service Commission, 120 Pa. Superior Ct. 266, 272, 182 A. 80. Questions similar to those presented in the Eieholz case have been before this court, most recently in Atlantic Freight Lines v. Pa. P.U.C., 163 Pa. Superior Ct. 215, 60 A. 2d 589 where we said: "Regulation of interstate highways transportation is vested in the Interstate Commerce Commission by the Motor Carrier Act of August 9, 1935, 49 U.S.C.A. § 301, et seq., and by that Act of Congress controverted questions of fact were entrusted to the commission. United States v. Maher, 307 U.S. 148, 154, 59 S. Ct. 768. Under the definitions of the Act, 'interstate commerce' may include transportation of goods 'between places in the same State through another State . . .' 49 U.S.C.A. § 303(a), (10), (Central Greyhound Lines v. Mealey, 334 U.S. 653, 68 S. Ct. 1260), but with the limitation that 'Nothing in this chapter shall be construed to . . . authorize a motor carrier to do an intrastate business on the highways of any State, or to interfere with the exclusive exercise by each State of the power of regulation of intrastate commerce by motor carriers on the highways thereof.' 49 U.S.C.A. § 302(b)." The Atlantic Freight Lines case involved shipments of sugar from a refinery in Philadelphia over highways in the State of Maryland and thence back into this State for delivery to consignees in Braddock, Pennsylvania. The Commission, after hearing, entered a cease and desist order prohibiting a continuance of this method of transportation under the guise of Interstate Commerce Commission authority. We affirmed the order in the application of the principle that a mere fiction of interstate commerce may not be so availed of as

to deprive a State of its power to enforce sound regulation of the use of its highways in interstate commerce. From the order an allocatur to our Supreme Court was refused, and certiorari to the United States Supreme Court denied. Nevin B. Lines, Inc., et al. v. Public Service Commission, supra, and Ryan et al. v. Pa. P.U.C., 143 Pa. Superior Ct. 517, 17 A. 2d 637, have much in common with the above Atlantic Freight Lines case and on appeals were disposed of with similar results. Cf. Service Storage & Transfer Co. v. Commonwealth of Virginia, 199 Va. 797, (1958), 102 S.E. 2d 339.

The obvious intent of the Interstate Commerce Commission's certificate is to permit a carrier to engage in interstate commerce and regulation of such service is the extent of the Commission's jurisdiction. Moreover, interstate commerce, to be entitled to protection as such "must be real and bona fide": Blackmore et al. v. Public Service Commission, 120 Pa. Superior Ct. 437, 183 A. 115. Tacking of the authority in the present case, under certificate MC 4963 to that of certificate MC 4963 Sub 7 was entirely proper in establishing through routes in interstate commerce (Cf. 49 U.S.C.A. § 316(c)) but such tacking cannot supply a carrier with authority to transport property in intrastate commerce. Service Storage & Transfer Co. v. Commonwealth of Virginia, supra. The Commission found that the shipments here involved were not bona fide interstate and in its order said: "It is quite apparent that we cannot, in these circumstances, regard routing via New Jersey under mere color of interstate operating authority as anything other than a subterfuge to provide what is in fact intrastate service." That conclusion was inevitable especially after respondent had been denied a certificate by our Public Utility Commission authorizing transportation of property intrastate between Philadelphia and Allentown areas. The Interstate Commerce Commission did not at any time assume jurisdiction of carrier service, via New Jersey, between two points in Pennsylvania; the

usual regular and normal route between Philadelphia and the Allentown areas in Pennsylvania was U.S. Highway 309, a distance of 55 miles; the distance by way of the circuitous route through New Jersey was 100 miles, with driving time of 3½ hours as against 2¼ hours over the direct intrastate route; the shipments in question here were all made at night; there was no terminal at Clinton and no stops, pickups, or deliveries were made enroute in New Jersey; in the present order the Commission noted that no difference in freight rates was indicated, between those charged by respondent and the approved tariff rates applicable to certified intrastate carriers.

In this case the evidence was entirely sufficient to support the findings of the Commission that the Interstate Commerce Commission had not assumed jurisdiction of carrier transportation between two points in Pennsylvania, via New Jersey and that the movement by respondent across the State line was but a subterfuge to evade the State's requirements as to intrastate commerce. Atlantic Freight Lines v. Pa. P.U.C., supra. Accordingly, the entry of a ceas eand desist order was proper in this case.

Order affirmed.

## APPENDIX III

PENNSYLVANIA PUBLIC UTILITY COMMISSION

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Complaint Docket No. 16813

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PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

JONES MOTOR COMPANY, INC.

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**Order**

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BY THE COMMISSION, SEPTEMBER 2, 1958:

On August 5, 1957, we instituted the instant complaint on our own motion against Jones Motor Company, Inc., respondent herein for transportation not authorized by its certificates of public convenience, in violation of Article II, Sections 202(b) and 202(c) of the Public Utility Law, Act of May 28, 1937, P.L. 1053, as amended (66 P.S. 1122(b) and 1122(c)).

Jones Motor Company, Inc., respondent, filed an answer thereto, in which it admitted the transportation but set up as a defense its certificates of public convenience and necessity issued by the Interstate Commerce Commission (I.C.C.) at Docket Nos. MC 4963 and MC 4963, Sub No. 7 (Respondent's Exhibits "A" and "B" of its Answer).

Highway Express Lines, Inc. and Modern Transfer Company, Inc., holders of certificates of public convenience of this Commission, authorizing them to transport, as common carriers, property between certain designated points and areas within this Commonwealth, were granted leave to intervene on the ground that they are adversely affected by the alleged illegal activities of this respondent.

Thereafter, hearings were held on February 3, 1958 and on June 30, 1958. Jones Motor Company, Inc., respondent, filed its brief on August 14, 1958. The matter is now before us for disposition.

The instant complaint specifically charged Jones Motor Company, Inc., respondent, with 22 violations. The illegal shipments alleged included: (1) eleven shipments originating in Philadelphia destined for Allentown, Bethlehem, Easton and Catasauqua; (2) four shipments originating in Easton destined for Philadelphia and Hatboro; (3) three shipments originating in Bethlehem destined for Philadelphia; (4) one shipment originating in Oaks for Bethlehem; (5) one shipment originating in Emmaus for Philadelphia; (6) one shipment originating in Catasauqua for Philadelphia; and (7) one shipment originating in Chester for Bethlehem. These shipments have been admitted.

Jones Motor Company, Inc. is the holder of a number of certificates of public convenience issued by this Commission, authorizing transportation of property, as a common carrier, between points within this Commonwealth. For the purpose of this proceeding, it is authorized to transport property as a Class A carrier between Allentown and Easton and intermediate points via Bethlehem, Butztown, and Dryland; and it holds rights as a Class A carrier between Bethlehem, Allentown and Stroudsburg and intermediate points over specified routes; between Borough of Bally, Berks County and Philadelphia and intermediate points, including Spring City, Trappe, King of Prussia, and Bridgeport; between Philadelphia and Reading; and between Reading and Bally.

It is of significance that on May 17, 1950, Jones Motor Company, Inc., filed an application for amendment of its certificates at Application Docket No. 59731, Folder 8, Am-A, so as to permit the transportation of property over an extension of the above-described Class A routes as follows:

"To transport, as a common carrier, property over an extension of the above described routes between the City of Allentown, Lehigh County and the Borough of Pottstown, Montgomery County, including intermediate points, via the following routes:

"Beginning in the City of Allentown, thence via Highway Route 29 to its intersection with Highway Route 100 at the Village of Shimerville, Lehigh County, thence via Highway routes 29 and 100 to the Village of Hereford, Berks County, thence via Highway Route 100 to the Borough of Bally, Berks County, thence via an unnumbered road known as Hill Road to its intersection with Highway Route 663, thence via Highway Route 663 to the Borough of Pottstown, Montgomery County, and via an alternate route beginning at the Village of Hereford, Berks County, thence via Highway Route 29 to its intersection with Highway Route 663 at the Borough of Pennsburg, Montgomery County, thence via Highway Route 663 to its intersection with the aforesaid road known as Hill Road; with the right to render through service from points on the aforedescribed routes as authorized in the certificates, proposed extension and proposed alternate route to points on applicant's other certificated routes briefly described as follows, and vice versa, between the Borough of Bally, Berks County and the City of Philadelphia, via routes 100 and 422 and over an alternate route between the Borough of Pottstown and Philadelphia, via Highway routes 100, 83 and 23, connecting route between Boyertown and Limerick, via Swamp Pike Road, connecting route between Spring City and Trappe, via Highway Route 683, and spur route between King of Prussia and Bridgeport, via Highway Route 202; between the City of Philadelphia and the City of Reading, via Highway Route 422 and via an alternate route between Philadelphia and Reading,

via Highway routes 83 and 23 with connecting route between Highway routes 422 and 23, via Butler, Pike, Fayette Street and Matsonford Road; and between the City of Reading and the Borough of Bally, via Highway routes 562 and 100."

The order of the Commission, dated August 23, 1954, granted the application; and modified this carrier's certificated Class A routes in the Allentown, Bethlehem, Easton, Stroudsburg area by an extension of such routes from Allentown to Pottstown, a distance of 13 miles, with the further right to render through service between points on these Class A routes, by way of the extension, and points on Jones' other Class A routes in the Philadelphia, Pottstown, Reading area. However, on appeal, the order of the Commission was reversed: Modern Transfer Company v. Pa. P.U.C., 179 Pa. Superior Ct. 46, 48, 49 and 55, 115 A. (2) 887 (1955). In its opinion of July 21, 1955, the Superior Court stated:

"Originally, Jones had class A rights to haul between the Borough of Bally, Berks County, and Philadelphia and intermediate points, including Spring City, Trappe, King of Prussia, and Bridgeport; between Philadelphia and Reading; and between Reading and Bally. These routes are designated as its 'southern' routes. In 1949, the Commission denied Jones' application, at Application Docket No. 59731, folder 2, Am-B, to transport property as a class D carrier from points in the Borough of Spring City and within 10 miles to points within 35 miles. In 1950, Jones acquired additional class A routes designated as its 'northern' routes, by purchasing the operating authority of Allentown-Easton Motor Express, Inc., and of Allentown-Bangor Motor Transfer, Inc. The latter was certificated to conduct a route service between Allentown, Bethlehem, Stroudsburg, and other points to the north of Allentown in the Pocono area;

while Allentown-Easton Motor Express, Inc., was certificated to conduct a route service between Allentown, Easton, and intermediate points by way of Bethlehem, Butztown, and Dryland.

"It is obvious that the purpose of the present application was not merely to obtain an extension of class A rights from Allentown to Pottstown, but to effect a consolidation of Jones' prior distinct and unconnected 'northern' and 'southern' class A routes. The Commission's order, in effect, provides for such a consolidation, and also has the effect of granting applicant a very substantial portion of those rights denied it in 1949. As a result Jones could haul from Philadelphia by using the newly certificated connecting route, as far north as Mountain Home in the Poconos. In addition Jones may haul between such vital areas as the Allentown, Bethlehem, Easton, Stroudsburg territory and Philadelphia, Reading, or Pottstown."

It concluded:

"* * * The burden was upon the applicant to show the need for the extensive rights sought on the combined routes including the 13-mile connecting route between Allentown and Pottstown. This was not met by equivocal or inconclusive testimony which, if it shows anything, substantiates the adequacy of existing service between the principal points on the combined routes. * * *"

Therefore, it seems plain that this carrier was specifically denied intrastate operating authority to transport property between Philadelphia, Allentown, Bethlehem, and Easton and intermediate points because of the adequacy of existing service.

Jones Motor Company, Inc., in attempting to establish the interstate character of the transportation in question

relied upon its certificates of public convenience and necessity issued by the Interstate Commerce Commission. At MC 4963 Jones is authorized to perform the following transportation, inter alia:

> "It Is Further Ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:
>
> Regular Routes:
>
> * * * * * * *
>
> "*General commodities,* except those of unusual value, and except dangerous explosives, livestock, films, household goods as defined in *Practices of Motor Common Carriers of Household Goods,* 17 M.C.C. 467, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading,
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> * * * * * * *
>
> "Between Philadelphia, Pa., and New York, N. Y.:
>
> From Philadelphia over U.S. Highway 1 to New York, and return over the same route.
>
> Service is authorized to and from all intermediate points.
>
> * * * * * * *
>
> "Service is authorized to and from off-route points in that part of Pennsylvania within 20 miles of Spring City, Pa., those in that part of New Jersey within 35 miles of Jersey City, N. J., those in that part of New Jersey within 35 miles of Princeton, N. J., and all other off-route points in the New York, N. Y., Commercial Zone, as defined by the Commission in 1 M.C.C. 665."

At MC 4963, Sub. No. 7 Jones is authorized to perform the following transportation:

"It Is Further Ordered, That the transportation service to be performed by the said carrier in interstate or foreign commerce shall be as specified below:

Regular Routes:

"*General commodities,* except those of unusual value, livestock, Class A and B explosives, household goods as defined by the Commission, commodities in bulk, commodities requiring special equipment, and those injurious or contaminating to other lading.

"Between Allentown, Pa., and Elizabeth, N. J.:

From Allentown over U. S. Highway 22 to junction New Jersey Highway 28 near Raritan, N. J., and thence over New Jersey Highway 28 to Elizabeth, and return over the same route.

"Service is authorized to and from all intermediate points and the off-route points of Lancaster, Pa., Dover, Newark, Hackettstown, Washington, Belvidere, and Newton, N. J., and points in Pennsylvania within 25 miles of Allentown."

Therefore, in effect, the rights authorized by the Interstate Commerce Commission permit Jones Motor Company, Inc. to go from Philadelphia to New York, to points within a 35 miles radius of Princeton, and from Allentown, Pennsylvania, to Elizabeth, New Jersey. It is by virtue of these rights and decisions of the Interstate Commerce Commission permitting "tacking" that Jones contended that it is able to combine its rights so as to set up a route from Allentown, Pennsylvania, thence to Clinton, New Jersey, thence to Trenton, New Jersey, and thence to Philadelphia, and vice versa. The routes traversed for each of the 22 shipments involved in this complaint proceeded from Philadelphia to Trenton, New Jersey, via U. S. Highway Route 1; thence via U. S. Route 60 to Clinton, New Jersey; thence via U. S. Highway Route 22 to Allentown,

and vice versa. Such operations in fact have been conducted on a daily basis since 1952.

Of course, regulation of interstate highway transportation is vested in the Interstate Commerce Commission by the Federal Motor Carrier Act of 1935, 49 U.S.C.A., Section 301, et seq. However, such regulation does not authorize a motor carrier to do an intrastate business on the highways of any state or otherwise interfere with the exclusive exercise of a state's power to regulate intrastate commerce: 49 U.S.C.A., Section 302(b); Ryan, et al. v. Pa. P.U.C., 143 Pa. Superior Ct. 517, 17 A. 2d 637, 39 PUR (NS) 455 (1950), allocatur to the Supreme Court refused and certiorari to the United States Supreme Court denied 314 U. S. 640, 62 S. Ct. 80, 86 L. Ed. 514 (1941); Atlantic Freight Lines v. Pa. P.U.C., 163 Pa. Superior Ct. 215, 60 A. 2d 589 (1948), allocatur to Supreme Court refused, certiorari denied to the United States Supreme Court 336 U. S. 925, 69 S. Ct. 656, 93 L. Ed. 1087 (1949); Clark v. The Public Service Commission, 209 Md. 121, 120 A. 2d 363 (1956); Eichholz v. The Public Service Commission of the State of Missouri, 306 U. S. 268, 59 S. Ct. 532, 83 L. Ed. 641, 27 PUR (NS) 288, rehearing denied 306 U. S. 622, 669, 83 L. Ed. 1063 (1939); and Central Greyhound Lines v. Mealey, 334 U. S. 653, at 660, 68 S. Ct. 1260, 92 L. Ed. 1633 (1947).

In our opinion, Jones Motor Company, Inc. has not established that these shipments between two points in Pennsylvania via New Jersey constituted bona fide shipments in interstate commerce. (1) The Interstate Commerce Commission has not assumed jurisdiction of transportation between two points in Pennsylvania. What the Interstate Commerce Commission authorized was transportation (a) from Philadelphia to New York, to points within a 35 mile radius of Princeton and (b) from Allentown, Pennsylvania, to Elizabeth, New Jersey, and not transportation from Philadelphia to Allentown, Bethle-

hem, Easton, and intermediate points, and vice versa—points of origin and delivery within Pennsylvania. (2) All of the shipments in the complaint were hauled from the Allentown terminal of Jones Motor Company, Inc., to its Philadelphia terminal or vice versa. No stops, pickups, or deliveries were made in New Jersey. (3) The distance via New Jersey measured approximately 100 miles as compared to 55 miles by the usually traveled or most direct intrastate route, and the average driving time via New Jersey consumed approximately three hours and thirty minutes as compared to two hours and fifteen minutes by the direct intrastate route. (4) No difference in rates was indicated between those charged by Jones Motor Company, Inc. and those charged by the certificated intrastate carriers. (5) No legitimate reason was advanced for routing the shipments via New Jersey.

It is quite apparent that we cannot, in these circumstances, regard routing via New Jersey under mere color of interstate operating authority as anything other than a subterfuge to provide what is in fact an intrastate service.

Jones Motor Company, Inc. actually holds itself out to provide transportation between points beginning and ending in this Commonwealth. By mere routing via New Jersey it has been doing indirectly what it could not do directly. If this Commission is unable to control such activities, it cannot effectively regulate transportation service within this Commonwealth, pursuant to the provisions of the Pennsylvania Public Utility Law, Act of May 28, 1937, P. L. 1053, as amended (66 P.S. Section 1101, et seq.). Regulation under the Act in the transportation field is there declared to be the public interest.

> "Section 801 (66 P.S § 1301). Declaration of Policy.—It is hereby declared to be the policy of the Legislature to regulate in this act the service of common carriers by motor vehicle and forwarders in such manner as to recognize and preserve the inherent

advantages of, and foster sound economic conditions in such service, and among such carriers and forwarders in the public interest; to promote safe, adequate, economical, and efficient service by common carriers by motor vehicle and forwarders, and just and reasonable rates therefor, without unjust discrimination, and unfair or destructive practices; to improve the relations between and coordinate the service and regulation of common carriers by motor vehicle, forwarders, and other carriers; to develop and preserve a safe highway transportation system properly adapted to the needs of the commerce of the Commonwealth of Pennsylvania and insure its availability between all points of production and markets of this Commonwealth. * * * "

Included in the Act as a duty of this Commission is that it " * * * enforce, execute, and carry out, by its regulations, orders, or otherwise, all and singular the provisions of this Act, and the full intent thereof: * * * " Section 902.

The Supreme Court of Appeals of Virginia recently affirmed a holding of the Virginia Commission that a carrier serving two points within a state does not escape state regulation by following a circuitous route into another state and back again for the purpose of evading such regulation; and that state regulation depends upon whether the movement is bona fide, of which the test is whether an ordinarily prudent carrier not restrained by regulation would use the interstate route: Virginia v. Service Storage & Transfer Co., 14 PUR (3d) 218 (1956); affirmed sub nom. Service Storage & Transfer Company, Inc. v. Commonwealth of Virginia, 199 Va. 797, 102 S. E. (2) 339 (1958). Applying this test to the instant case, wherein the evidence clearly shows that the "normal or usual" routes were not followed between the Pennsylvania points, there is no doubt in our minds that the shipments

in question are amenable to the jurisdiction of this Commission.

In our consideration of the facts and the law in this case, we find and determine that Jones Motor Company, Inc., respondent, has been engaged in the transportation of property between points in Pennsylvania without first having obtained the approval of this Commission; further that the transportation between points of origin and destination within the Commonwealth of Pennsylvania via New Jersey routes is a subterfuge to evade the Pennsylvania law and the jurisdiction of this Commission; THEREFORE,

IT IS ORDERED: That the instant complaint be and is hereby sustained.

IT IS FURTHER ORDERED: That Jones Motor Company, Inc., its agents and employees, forthwith cease and desist rendition of service as a motor carrier in intrastate commerce except as specifically authorized by certificates of public convenience issued by this Commission.

PENNSYLVANIA PUBLIC UTILITY COMMISSION

(signed) LEON SCHWARTZ
*Chairman*

ATTEST:

/s/ WILLIAM P. ROAN
*Secretary*

(SEAL)

Commissioner Houck voted in the negative.

## APPENDIX IV

C. P. Dauphin County

Equity Docket No. 2008

C. D. No. 267

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

ATLANTIC FREIGHT LINES, INC.

### STIPULATION

AND NOW, this 27th day of July, A. D., 1955, it is hereby stipulated and agreed by and between the parties to the above styled cause that the Court shall and may enter the following decree.

(s) HARRIS LATTA

(s) JOSEPH HISSLEY

*Attorneys for Atlantic Freight Lines*

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C. P. Dauphin County

Equity Docket No. 2008

C. D. No. 267

PENNSYLVANIA PUBLIC UTILITY COMMISSION

v.

ATLANTIC FREIGHT LINES, INC.

### DECREE

AND NOW, this 27th day of July, 1955, upon the consent of the parties to the above styled cause, and upon consideration of the pleadings filed and proceedings heretofore had therein, the plaintiff having exhibited its complaint, as

amended, asking relief touching the matters therein particular complained of and set forth at length, and preliminary objections to the complaint having been determined, and answer having been filed by defendant, and the parties, including intervenors, having agreed that the matter shall be disposed of by the entry of a consent decree.

Now Therefore, It Is Ordered, Adjudged, Decreed And Finally Determined that defendant, Atlantic Freight Lines, Inc., be, and hereby is, enjoined from transporting freight, as a common carrier by motor vehicle, or otherwise, between points in Pennsylvania, except such transportation in interstate commerce as may be authorized by operating authority from the Interstate Commerce Commission and which in fact moves over an interstate route of movement; it being the intent of this decree to prohibit absolutely any transportation of freight by defendant between points in Pennsylvania in intrastate commerce over a route of movement lying wholly within the Commonwealth of Pennsylvania, but to impose no restriction whatsoever upon defendant with repsect to transportation in interstate commerce between points in Pennsylvania which defendant is authorized to serve by operating authority from the Interstate Commerce Commission and which transportation in fact moves over a route of movement so authorized by the Interstate Commerce Commission and lying partly within and partly without the Commonwealth of Pennsylvania.

(s) Walter R. Sohn
*J.*

We consent to the entry of the foregoing decree.

(s) Harris Latta

(s) Joseph Nissley
*Attorneys for Atlantic Freight Lines*